

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

175P0063

SENATE BILL NO. 93

Introduced by: Senators Knudson and Heidepriem and Representatives Lust and Feinstein

1 FOR AN ACT ENTITLED, An Act to revise the uniform commercial code.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Section 1-101.

4 (a) This title may be cited as the Uniform Commercial Code.

5 (b) This article may be cited as Uniform Commercial Code – General Provisions.

6 Section 2. Section 1-102. This article applies to a transaction to the extent that it is governed
7 by another article of Title 57A.

8 Section 3. Section 1-103.

9 (a) This title shall be liberally construed and applied to promote its underlying purposes and
10 policies, which are:

11 (1) To simplify, clarify, and modernize the law governing commercial transactions;

12 (2) To permit the continued expansion of commercial practices through custom, usage,
13 and agreement of the parties; and

14 (3) To make uniform the law among the various jurisdictions.

15 (b) Unless displaced by the particular provisions of this title, the principles of law and



equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

Section 4. Section 1-104. This title being a general act intended as a unified coverage of its subject matter, no part of it may be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Section 5. Section 1-105. If any provision or clause of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

Section 6. Section 1-106. In this title, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

Section 7. Section 1-107. Section captions are part of this title.

Section 8. Section 1-108. This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq.*, except that nothing in this article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.

Section 9. Section 1-201.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this title that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of this title that apply to particular

1 articles or parts thereof:

2 (1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim,
3 set-off, suit in equity, and any other proceeding in which rights are determined.

4 (2) "Aggrieved party" means a party entitled to pursue a remedy.

5 (3) "Agreement," as distinguished from "contract," means the bargain of the parties in
6 fact, as found in their language or inferred from other circumstances, including
7 course of performance, course of dealing, or usage of trade as provided in section
8 1-303.

9 (4) "Bank" means a person engaged in the business of banking and includes a savings
10 bank, savings and loan association, credit union, and trust company.

11 (5) "Bearer" means a person in possession of a negotiable instrument, document of title,
12 or certificated security that is payable to bearer or indorsed in blank.

13 (6) "Bill of lading" means a document evidencing the receipt of goods for shipment
14 issued by a person engaged in the business of transporting or forwarding goods.

15 (7) "Branch" includes a separately incorporated foreign branch of a bank.

16 (8) "Burden of establishing" a fact means the burden of persuading the trier of fact that
17 the existence of the fact is more probable than its nonexistence.

18 (9) "Buyer in ordinary course of business" means a person that buys goods in good faith,
19 without knowledge that the sale violates the rights of another person in the goods,
20 and in the ordinary course from a person, other than a pawnbroker, in the business
21 of selling goods of that kind. A person buys goods in the ordinary course if the sale
22 to the person comports with the usual or customary practices in the kind of business
23 in which the seller is engaged or with the seller's own usual or customary practices.
24 A person that sells oil, gas, or other minerals at the wellhead or minehead is a person

1 in the business of selling goods of that kind. A buyer in ordinary course of business
2 may buy for cash, by exchange of other property, or on secured or unsecured credit,
3 and may acquire goods or documents of title under a preexisting contract for sale.
4 Only a buyer that takes possession of the goods or has a right to recover the goods
5 from the seller under Article 2 may be a buyer in ordinary course of business. "Buyer
6 in ordinary course of business" does not include a person that acquires goods in a
7 transfer in bulk or as security for or in total or partial satisfaction of a money debt.

8 (10) "Conspicuous," with reference to a term, means so written, displayed, or presented
9 that a reasonable person against which it is to operate ought to have noticed it.
10 Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms
11 include the following:

12 (A) A heading in capitals equal to or greater in size than the surrounding text, or
13 in contrasting type, font, or color to the surrounding text of the same or lesser
14 size; and

15 (B) Language in the body of a record or display in larger type than the surrounding
16 text, or in contrasting type, font, or color to the surrounding text of the same
17 size, or set off from surrounding text of the same size by symbols or other
18 marks that call attention to the language.

19 (11) "Consumer" means an individual who enters into a transaction primarily for personal,
20 family, or household purposes.

21 (12) "Contract," as distinguished from "agreement," means the total legal obligation that
22 results from the parties' agreement as determined by this title as supplemented by any
23 other applicable laws.

24 (13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any

representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery," with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) Goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith," except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" means:

(A) The person in possession of a negotiable instrument that is payable either to

1 bearer or to an identified person that is the person in possession; or

2 (B) The person in possession of a document of title if the goods are deliverable
3 either to bearer or to the order of the person in possession.

4 (22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other
5 proceeding intended to liquidate or rehabilitate the estate of the person involved.

6 (23) "Insolvent" means:

7 (A) Having generally ceased to pay debts in the ordinary course of business other
8 than as a result of bona fide dispute;

9 (B) Being unable to pay debts as they become due; or

10 (C) Being insolvent within the meaning of federal bankruptcy law.

11 (24) "Money" means a medium of exchange currently authorized or adopted by a domestic
12 or foreign government. The term includes a monetary unit of account established by
13 an intergovernmental organization or by agreement between two or more countries.

14 (25) "Organization" means a person other than an individual.

15 (26) "Party," as distinguished from "third party," means a person that has engaged in a
16 transaction or made an agreement subject to this title.

17 (27) "Person" means an individual, corporation, business trust, estate, trust, partnership,
18 limited liability company, association, joint venture, government, governmental
19 subdivision, agency, or instrumentality, public corporation, or any other legal or
20 commercial entity.

21 (28) "Present value" means the amount as of a date certain of one or more sums payable
22 in the future, discounted to the date certain by use of either an interest rate specified
23 by the parties if that rate is not manifestly unreasonable at the time the transaction is
24 entered into or, if an interest rate is not so specified, a commercially reasonable rate

1 that takes into account the facts and circumstances at the time the transaction is
2 entered into.

3 (29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien,
4 security interest, issue or reissue, gift, or any other voluntary transaction creating an
5 interest in property.

6 (30) "Purchaser" means a person that takes by purchase.

7 (31) "Record" means information that is inscribed on a tangible medium or that is stored
8 in an electronic or other medium and is retrievable in perceivable form.

9 (32) "Remedy" means any remedial right to which an aggrieved party is entitled with or
10 without resort to a tribunal.

11 (33) "Representative" means a person empowered to act for another, including an agent,
12 an officer of a corporation or association, and a trustee, executor, or administrator of
13 an estate.

14 (34) "Right" includes remedy.

15 (35) "Security interest" means an interest in personal property or fixtures which secures
16 payment or performance of an obligation. "Security interest" includes any interest of
17 a consignor and a buyer of accounts, chattel paper, a payment intangible, or a
18 promissory note in a transaction that is subject to Article 9. "Security interest" does
19 not include the special property interest of a buyer of goods on identification of those
20 goods to a contract for sale under Section 2-401, but a buyer may also acquire a
21 "security interest" by complying with Article 9. Except as otherwise provided in
22 Section 2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain
23 or acquire possession of the goods is not a "security interest," but a seller or lessor
24 may also acquire a "security interest" by complying with Article 9. The retention or

1 reservation of title by a seller of goods notwithstanding shipment or delivery to the
2 buyer under Section 2-401 is limited in effect to a reservation of a "security interest."
3 Whether a transaction in the form of a lease creates a "security interest" is determined
4 pursuant to Section 1-203.

5 (36) "Send" in connection with a writing, record, or notice means:

6 (A) To deposit in the mail or deliver for transmission by any other usual means of
7 communication with postage or cost of transmission provided for and properly
8 addressed and, in the case of an instrument, to an address specified thereon or
9 otherwise agreed, or if there be none to any address reasonable under the
10 circumstances; or

11 (B) In any other way to cause to be received any record or notice within the time
12 it would have arrived if properly sent.

13 (37) "Signed" includes using any symbol executed or adopted with present intention to
14 adopt or accept a writing.

15 (38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the
16 United States Virgin Islands, or any territory or insular possession subject to the
17 jurisdiction of the United States.

18 (39) "Surety" includes a guarantor or other secondary obligor.

19 (40) "Term" means a portion of an agreement that relates to a particular matter.

20 (41) "Unauthorized signature" means a signature made without actual, implied, or
21 apparent authority. The term includes a forgery.

22 (42) "Warehouse receipt" means a receipt issued by a person engaged in the business of
23 storing goods for hire.

24 (43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible

1 form. "Written" has a corresponding meaning.

2 Section 10. Section 1-202.

3 (a) Subject to subsection (f), a person has "notice" of a fact if the person:

4 (1) Has actual knowledge of it;

5 (2) Has received a notice or notification of it; or

6 (3) From all the facts and circumstances known to the person at the time in question, has
7 reason to know that it exists.

8 (b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

9 (c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason
10 to know.

11 (d) A person "notifies" or "gives" a notice or notification to another person by taking such
12 steps as may be reasonably required to inform the other person in ordinary course, whether or
13 not the other person actually comes to know of it.

14 (e) Subject to subsection (f), a person "receives" a notice or notification when:

15 (1) It comes to that person's attention; or

16 (2) It is duly delivered in a form reasonable under the circumstances at the place of
17 business through which the contract was made or at another location held out by that
18 person as the place for receipt of such communications.

19 (f) Notice, knowledge, or a notice or notification received by an organization is effective for
20 a particular transaction from the time it is brought to the attention of the individual conducting
21 that transaction and, in any event, from the time it would have been brought to the individual's
22 attention if the organization had exercised due diligence. An organization exercises due
23 diligence if it maintains reasonable routines for communicating significant information to the
24 person conducting the transaction and there is reasonable compliance with the routines. Due

1 diligence does not require an individual acting for the organization to communicate information
2 unless the communication is part of the individual's regular duties or the individual has reason
3 to know of the transaction and that the transaction would be materially affected by the
4 information.

5 Section 11. Section 1-203.

6 (a) Whether a transaction in the form of a lease creates a lease or security interest is
7 determined by the facts of each case.

8 (b) A transaction in the form of a lease creates a security interest if the consideration that the
9 lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the
10 term of the lease and is not subject to termination by the lessee, and:

11 (1) The original term of the lease is equal to or greater than the remaining economic life
12 of the goods;

13 (2) The lessee is bound to renew the lease for the remaining economic life of the goods
14 or is bound to become the owner of the goods;

15 (3) The lessee has an option to renew the lease for the remaining economic life of the
16 goods for no additional consideration or for nominal additional consideration upon
17 compliance with the lease agreement; or

18 (4) The lessee has an option to become the owner of the goods for no additional
19 consideration or for nominal additional consideration upon compliance with the lease
20 agreement.

21 (c) A transaction in the form of a lease does not create a security interest merely because:

22 (1) The present value of the consideration the lessee is obligated to pay the lessor for the
23 right to possession and use of the goods is substantially equal to or is greater than the
24 fair market value of the goods at the time the lease is entered into;

- 1 (2) The lessee assumes risk of loss of the goods;
- 2 (3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording,
- 3 or registration fees, or service or maintenance costs;
- 4 (4) The lessee has an option to renew the lease or to become the owner of the goods;
- 5 (5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater
- 6 than the reasonably predictable fair market rent for the use of the goods for the term
- 7 of the renewal at the time the option is to be performed; or
- 8 (6) The lessee has an option to become the owner of the goods for a fixed price that is
- 9 equal to or greater than the reasonably predictable fair market value of the goods at
- 10 the time the option is to be performed.

11 (d) Additional consideration is nominal if it is less than the lessee's reasonably predictable
12 cost of performing under the lease agreement if the option is not exercised. Additional
13 consideration is not nominal if:

- 14 (1) When the option to renew the lease is granted to the lessee, the rent is stated to be the
- 15 fair market rent for the use of the goods for the term of the renewal determined at the
- 16 time the option is to be performed; or
- 17 (2) When the option to become the owner of the goods is granted to the lessee, the price
- 18 is stated to be the fair market value of the goods determined at the time the option is
- 19 to be performed.

20 (e) The "remaining economic life of the goods" and "reasonably predictable" fair market
21 rent, fair market value, or cost of performing under the lease agreement must be determined with
22 reference to the facts and circumstances at the time the transaction is entered into.

23 Section 12. Section 1-204. Except as otherwise provided in Articles 3, 4, and 5, a person
24 gives value for rights if the person acquires them:

- (1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (2) As security for, or in total or partial satisfaction of, a preexisting claim;
- (3) By accepting delivery under a preexisting contract for purchase; or
- (4) In return for any consideration sufficient to support a simple contract.

Section 13. Section 1-205.

(a) Whether a time for taking an action required by this title is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

Section 14. Section 1-206. Whenever this title creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

Section 15. Section 1-301.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. § 57A-2-402.

Applicability of the article on leases. §§ 57A-2A-105 and 57A-2A-106.

1 Applicability of the chapters on bank deposits and collections. § 57A-4-102.

2 Governing law in the article on funds transfers. § 57A-4A-507.

3 Letters of Credit. § 57A-5-116.

4 Applicability of the chapters on investment securities. § 57A-8-110.

5 Law governing perfection, the effect of perfection or nonperfection, and the priority of
6 security interests and agricultural liens. §§ 57-9-301 to 57-9-307, inclusive.

7 Section 16. Section 1-302.

8 (a) Except as otherwise provided in subsection (b) or elsewhere in this title, the effect of
9 provisions of this title may be varied by agreement.

10 (b) The obligations of good faith, diligence, reasonableness, and care prescribed by this title
11 may not be disclaimed by agreement. The parties, by agreement, may determine the standards
12 by which the performance of those obligations is to be measured if those standards are not
13 manifestly unreasonable. Whenever this title requires an action to be taken within a reasonable
14 time, a time that is not manifestly unreasonable may be fixed by agreement.

15 (c) The presence in certain provisions of this title of the phrase "unless otherwise agreed,"
16 or words of similar import, does not imply that the effect of other provisions may not be varied
17 by agreement under this section.

18 Section 17. Section 1-303.

19 (a) A "course of performance" is a sequence of conduct between the parties to a particular
20 transaction that exists if:

21 (1) The agreement of the parties with respect to the transaction involves repeated
22 occasions for performance by a party; and

23 (2) The other party, with knowledge of the nature of the performance and opportunity for
24 objection to it, accepts the performance or acquiesces in it without objection.

1 (b) A "course of dealing" is a sequence of conduct concerning previous transactions between
2 the parties to a particular transaction that is fairly to be regarded as establishing a common basis
3 of understanding for interpreting their expressions and other conduct.

4 (c) A "usage of trade" is any practice or method of dealing having such regularity of
5 observance in a place, vocation, or trade as to justify an expectation that it will be observed with
6 respect to the transaction in question. The existence and scope of such a usage must be proved
7 as facts. If it is established that such a usage is embodied in a trade code or similar record, the
8 interpretation of the record is a question of law.

9 (d) A course of performance or course of dealing between the parties or usage of trade in the
10 vocation or trade in which they are engaged or of which they are or should be aware is relevant
11 in ascertaining the meaning of the parties' agreement, may give particular meaning to specific
12 terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of
13 trade applicable in the place in which part of the performance under the agreement is to occur
14 may be so utilized as to that part of the performance.

15 (e) Except as otherwise provided in subsection (f), the express terms of an agreement and
16 any applicable course of performance, course of dealing, or usage of trade must be construed
17 whenever reasonable as consistent with each other. If such a construction is unreasonable:

18 (1) Express terms prevail over course of performance, course of dealing, and usage of
19 trade;

20 (2) Course of performance prevails over course of dealing and usage of trade; and

21 (3) Course of dealing prevails over usage of trade.

22 (f) Subject to Section 2-209, a course of performance is relevant to show a waiver or
23 modification of any term inconsistent with the course of performance.

24 (g) Evidence of a relevant usage of trade offered by one party is not admissible unless that

1 party has given the other party notice that the court finds sufficient to prevent unfair surprise to
2 the other party.

3 Section 18. Section 1-304. Every contract or duty within this title imposes an obligation of
4 good faith in its performance and enforcement.

5 Section 19. Section 1-305.

6 (a) The remedies provided by this title must be liberally administered to the end that the
7 aggrieved party may be put in as good a position as if the other party had fully performed but
8 neither consequential or special damages nor penal damages may be had except as specifically
9 provided in this title or by other rule of law.

10 (b) Any right or obligation declared by this title is enforceable by action unless the provision
11 declaring it specifies a different and limited effect.

12 Section 20. Section 1-306. A claim or right arising out of an alleged breach may be
13 discharged in whole or in part without consideration by agreement of the aggrieved party in an
14 authenticated record.

15 Section 21. Section 1-307. A document in due form purporting to be a bill of lading, policy
16 or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any
17 other document authorized or required by the contract to be issued by a third party is prima facie
18 evidence of its own authenticity and genuineness and of the facts stated in the document by the
19 third party.

20 Section 22. Section 1-308.

21 (a) A party that with explicit reservation of rights performs or promises performance or
22 assents to performance in a manner demanded or offered by the other party does not thereby
23 prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are
24 sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

Section 23. Section 1-309. A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

Section 24. Section 1-310. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

Section 25. That § 57A-2-103 be amended to read as follows:

57A-2-103. (1) In this chapter unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) ~~"Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.~~ (Reserved.)

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Acceptance." § 57A-2-606.

"Banker's credit." § 57A-2-325.

"Between merchants." § 57A-2-104.

- 1 "Cancellation." § 57A-2-106(4).
- 2 "Commercial unit." § 57A-2-105.
- 3 "Confirmed credit." § 57A-2-325.
- 4 "Conforming to contract." § 57A-2-106.
- 5 "Contract for sale." § 57A-2-106.
- 6 "Cover." § 57A-2-712.
- 7 "Entrusting." § 57A-2-403.
- 8 "Financing agency." § 57A-2-104.
- 9 "Future goods." § 57A-2-105.
- 10 "Goods." § 57A-2-105.
- 11 "Identification." § 57A-2-501.
- 12 "Installment contract." § 57A-2-612.
- 13 "Letter of credit." § 57A-2-325.
- 14 "Lot." § 57A-2-105.
- 15 "Merchant." § 57A-2-104.
- 16 "Overseas." § 57A-2-323.
- 17 "Person in position of seller." § 57A-2-707.
- 18 "Present sale." § 57A-2-106.
- 19 "Sale." § 57A-2-106.
- 20 "Sale on approval." § 57A-2-326.
- 21 "Sale or return." § 57A-2-326.
- 22 "Termination." § 57A-2-106.
- 23 (3) The following definitions in other chapters apply to this chapter:
- 24 "Check." § 57A-3-104.

1 "Consignee." § 57A-7-102.

2 "Consignor." § 57A-7-102.

3 "Consumer goods." § 57A-9-102.

4 "Dishonor." § 57A-3-502.

5 "Draft." § 57A-3-104.

6 (4) In addition chapter 57A-1 contains general definitions and principles of construction and
7 interpretation applicable throughout this chapter.

8 Section 26. That § 57A-2-202 be amended to read as follows:

9 57A-2-202. Terms with respect to which the confirmatory memoranda of the parties agree
10 or which are otherwise set forth in a writing intended by the parties as a final expression of their
11 agreement with respect to such terms as are included therein may not be contradicted by
12 evidence of any prior agreement or of a contemporaneous oral agreement but may be explained
13 or supplemented

14 (a) By course of performance, course of dealing or usage of trade (§ 57A-1-205) or by
15 course of performance (§ 57A-2-208 § 57A-1-303); and

16 (b) By evidence of consistent additional terms unless the court finds the writing to have
17 been intended also as a complete and exclusive statement of the terms of the
18 agreement.

19 Section 27. That § 57A-2-208 be repealed.

20 ~~57A-2-208. (1) Where the contract for sale involves repeated occasions for performance~~
21 ~~by either party with knowledge of the nature of the performance and~~
22 ~~opportunity for objection to it by the other, any course of performance~~
23 ~~accepted or acquiesced in without objection shall be relevant to~~
24 ~~determine the meaning of the agreement.~~

1 ~~(2) The express terms of the agreement and any such course of performance, as well as~~
2 ~~any course of dealing and usage of trade, shall be construed whenever reasonable as~~
3 ~~consistent with each other; but when such construction is unreasonable, express~~
4 ~~terms shall control course of performance and course of performance shall control~~
5 ~~both course of dealing and usage of trade (§ 57A-1-205).~~

6 ~~(3) Subject to the provisions of § 57A-2-209 on modification and waiver, such course~~
7 ~~of performance shall be relevant to show a waiver or modification of any term~~
8 ~~inconsistent with such course of performance.~~

9 Section 28. That § 57A-2A-103 be amended to read as follows:

10 57A-2A-103. (1) In this chapter unless the context otherwise requires:

11 (a) "Buyer in ordinary course of business" means a person who in good faith and without
12 knowledge that the sale to him is in violation of the ownership rights or security
13 interest or leasehold interest of a third party in the goods buys in ordinary course
14 from a person in the business of selling goods of that kind but does not include a
15 pawnbroker. "Buying" may be for cash or by exchange of other property or on
16 secured or unsecured credit and includes receiving goods or documents of title under
17 a preexisting contract for sale but does not include a transfer in bulk or as security for
18 or in total or partial satisfaction of a money debt.

19 (b) "Cancellation" occurs when either party puts an end to the lease contract for default
20 by the other party.

21 (c) "Commercial unit" means such a unit of goods as by commercial usage is a single
22 whole for purposes of lease and division of which materially impairs its character or
23 value on the market or in use. A commercial unit may be a single article, as a
24 machine, or a set of articles, as a suite of furniture or a line of machinery, or a

1 quantity, as a gross or carload, or any other unit treated in use or in the relevant
2 market as a single whole.

3 (d) "Conforming" goods or performance under a lease contract means goods or
4 performance that are in accordance with the obligations under the lease contract.

5 (e) "Consumer lease" means a lease that a lessor regularly engaged in the business of
6 leasing or selling makes to a lessee who is a natural person and takes under the lease
7 primarily for a personal, family, or household purpose.

8 (f) "Fault" means wrongful act, omission, breach or default.

9 (g) "Finance lease" means a lease in which (i) the lessor does not select, manufacture or
10 supply the goods, (ii) the lessor acquires the goods or the right to possession and use
11 of the goods in connection with the lease, and (iii) either (A) the lessee receives a
12 copy of the contract evidencing the lessor's purchase of the goods on or before
13 signing the lease contract, (B) the lessee's approval of the contract evidencing the
14 lessor's purchase of the goods is a condition to effectiveness of the lease contract, (C)
15 the lessor (aa) informs the lessee in writing of the identity of the supplier unless the
16 lessee has selected the supplier and directed the lessor to purchase the goods from the
17 supplier, (bb) informs the lessee in writing that the lessee may have rights under the
18 contract evidencing the lessor's purchase of the goods, and (cc) advises the lessee in
19 writing to contact the supplier for a description of any such rights, or (D) the lease
20 contract discloses all warranties and other rights provided to the lessee by the lessor
21 and supplier in connection with the lease contract and informs the lessee that there
22 are no warranties or other rights provided to the lessee by the lessor and supplier
23 other than those disclosed in the lease contract.

24 (h) "Goods" means all things that are movable at the time of identification to the lease

1 contract, or are fixtures (§ 57A-2A-309), but the term does not include money,
2 documents, instruments, accounts, chattel paper, general intangibles, or minerals or
3 the like, including oil and gas, before extraction. The term also includes the unborn
4 young of animals.

5 (i) "Installment lease contract" means a lease contract that authorizes or requires the
6 delivery of goods in separate lots to be separately accepted, even though the lease
7 contract contains a clause "each delivery is a separate lease" or its equivalent.

8 (j) "Lease" means a transfer of the right to possession and use of goods for a term in
9 return for consideration, but a sale, including a sale on approval or a sale or return,
10 or retention or creation of a security interest is not a lease. Unless the context clearly
11 indicates otherwise, the term includes a sublease.

12 (k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the
13 lessee in fact as found in their language or by implication from other circumstances
14 including course of dealing or usage of trade or course of performance as provided
15 in this chapter. Unless the context clearly indicates otherwise, the term includes a
16 sublease agreement.

17 (l) "Lease contract" means the total legal obligation that results from the lease agreement
18 as affected by this chapter and any other applicable rules of law. Unless the context
19 clearly indicates otherwise, the term includes a sublease contract.

20 (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease
21 contract.

22 (n) "Lessee" means a person who acquires the right to possession and use of goods under
23 a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

24 (o) "Lessee in ordinary course of business" means a person who in good faith and

1 without knowledge that the lease to him is in violation of the ownership rights or
2 security interest or leasehold interest of a third party in the goods leases in ordinary
3 course from a person in the business of selling or leasing goods of that kind but does
4 not include a pawnbroker. "Leasing" may be for cash or by exchange of other
5 property or on secured or unsecured credit and includes receiving goods or
6 documents of title under a preexisting lease contract but does not include a transfer
7 in bulk or as security for or in total or partial satisfaction of a money debt.

8 (p) "Lessor" means a person who transfers the right to possession and use of goods under
9 a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

10 (q) "Lessor's residual interest" means the lessor's interest in the goods after expiration,
11 termination or cancellation of the lease contract.

12 (r) "Lien" means a charge against or interest in goods to secure payment of a debt or
13 performance of an obligation, but the term does not include a security interest.

14 (s) "Lot" means a parcel or a single article that is the subject matter of a separate lease
15 or delivery, whether or not it is sufficient to perform the lease contract.

16 (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind
17 subject to the lease.

18 (u) "Present value" means the amount as of a date certain of one or more sums payable
19 in the future, discounted to the date certain. The discount is determined by the
20 interest rate specified by the parties if the rate was not manifestly unreasonable at the
21 time the transaction was entered into; otherwise, the discount is determined by a
22 commercially reasonable rate that takes into account the facts and circumstances of
23 each case at the time the transaction was entered into.

24 (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or

1 any other voluntary transaction creating an interest in goods.

2 (w) "Sublease" means a lease of goods the right to possession and use of which was
3 acquired by the lessor as a lessee under an existing lease.

4 (x) "Supplier" means a person from whom a lessor buys or leases goods to be leased
5 under a finance lease.

6 (y) "Supply contract" means a contract under which a lessor buys or leases goods to be
7 leased.

8 (z) "Termination" occurs when either party pursuant to a power created by agreement or
9 law puts an end to the lease contract otherwise than for default.

10 (2) Other definitions applying to this chapter and the sections in which they appear are:

11 "Accessions." § 57A-2A-310(1).

12 "Construction mortgage." § 57A-2A-309(1)(d).

13 "Encumbrance." § 57A-2A-309(1)(e).

14 "Fixtures." § 57A-2A-309(1)(a).

15 "Fixture filing." § 57A-2A-309(1)(b).

16 "Purchase money lease." § 57A-2A-309(1)(c).

17 (3) The following definitions apply to this chapter:

18 "Account." § 57A-9-102(a)(2).

19 "Between merchants." § 57A-2-104(3) .

20 "Buyer." § 57A-2-103(1)(a).

21 "Chattel paper." § 57A-9-102(a)(11).

22 "Consumer goods." § 57A-9-102(a)(23).

23 "Document." § 57A-9-102(a)(30).

24 "Entrusting." § 57A-2-403(3).

1 "General intangible." § 57A-9-102(a)(42).

2 ~~"Good faith." § 57A-2-103(1)(b).~~

3 "Instrument." § 57A-9-102(a)(47).

4 "Merchant." § 57A-2-104(1).

5 "Mortgage." § 57A-9-102(a)(55).

6 "Pursuant to commitment." § 57A-9-102(a)(68).

7 "Receipt." § 57A-2-103(1)(c).

8 "Sale." § 57A-2-106(1).

9 "Sale on approval." § 57A-2-326(1)(a).

10 "Sale or return." § 57A-2-326(1)(b).

11 "Seller." § 57A-2-103(1)(d).

12 (4) In addition, chapter 57A-1 (commencing with § 57A-1-101) contains general definitions
13 and principles of construction and interpretation applicable throughout this chapter.

14 Section 29. That § 57a-2a-207 be repealed.

15 ~~57A-2A-207. (1) If a lease contract involves repeated occasions for performance by either~~
16 ~~party with knowledge of the nature of the performance and opportunity~~
17 ~~for objection to it by the other, any course of performance accepted or~~
18 ~~acquiesced in without objection is relevant to determine the meaning of~~
19 ~~the lease agreement.~~

20 ~~(2) The express terms of a lease agreement and any course of performance, as well as any~~
21 ~~course of dealing and usage of trade, must be construed whenever reasonable as~~
22 ~~consistent with each other; but if that construction is unreasonable, express terms~~
23 ~~control course of performance, course of performance controls both course of dealing~~
24 ~~and usage of trade, and course of dealing controls usage of trade.~~

1 ~~(3) Subject to the provisions of § 57A-2A-208, on modification and waiver, course of~~
2 ~~performance is relevant to show a waiver or modification of any term inconsistent~~
3 ~~with the course of performance.~~

4 Section 30. That § 57A-2A-501 be amended to read as follows:

5 57A-2A-501.

6 (1) Whether the lessor or the lessee is in default under a lease contract is determined by
7 the lease agreement and this chapter.

8 (2) If the lessor or the lessee is in default under the lease contract, the party seeking
9 enforcement has rights and remedies as provided in this chapter and, except as
10 limited by the chapter, as provided in the lease agreement.

11 (3) If the lessor or the lessee is in default under the lease contract, the party seeking
12 enforcement may reduce the party's claim to judgment, or otherwise enforce the lease
13 contract by self-help or any available judicial procedure or nonjudicial procedure,
14 including administrative proceeding, arbitration, or the like, in accordance with this
15 chapter.

16 (4) Except as otherwise provided in § 57A-1-305(a) or this chapter or the lease
17 agreement, the rights and remedies referred to in subsections (2) and (3) of this
18 section are cumulative.

19 (5) If the lease agreement covers both real property and goods, the party seeking
20 enforcement may proceed under this chapter as to the goods, or under other
21 applicable law as to both the real property and the goods in accordance with his rights
22 and remedies in respect of the real property, in which case this chapter does not
23 apply.

24 Section 31. That § 57A-2A-518 be amended to read as follows:

57A-2A-518.

(1) After default by a lessor under the lease contract (§ 57A-2A-508(1)), the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 57A-2A-504) or otherwise determined by agreement of the parties (§§ 57A-1-302 and 57A-2A-503 ~~and 57A-1-102(3)~~), if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (a) the present value, as of the date of the commencement of the new lease agreement, of the difference between the total rent for the lease term of the new lease agreement and the total rent for the then remaining lease term of the original lease agreement and (b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If the lessee's cover is by lease agreement that qualifies for treatment under subsection (2) of this section, the lessee may elect to proceed under subsection (2) of this section or § 57A-2A-519. If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor under § 57A-2A-519 as if the lessee had elected not to cover.

Section 32. That § 57A-2A-519 be amended to read as follows:

57A-2A-519.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 57A-2A-504) or determined by agreement of the parties (§ ~~57A-1-~~

~~102(3)~~§§ 57A-1-302 and 57A-2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement, whether or not the lease agreement qualifies for treatment under § 57A-2A-518(2), or is by purchase or otherwise, the measure of damages for default by the lessor (§ 57A-2A-508(1)) is the present value as of the date of the default of the difference between the then market rent and the original rent, computed for the remaining lease term of the original lease agreement together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) If the lessee has accepted goods and given notification (§ 57A-2A-516(3)), the measure of damages for nonconforming tender or delivery by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) The measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

Section 33. That § 57A-2A-527 be amended to read as follows:

57A-2A-527.

(1) After a default by a lessee under the lease contract (§ 57A-2A-523(1)) or after the

1 lessor refuses to deliver or takes possession of goods (§ 57A-2A-525 or 57A-2A-
2 526), the lessor may dispose of the goods concerned or the undelivered balance
3 thereof by lease, sale or otherwise.

4 (2) Except as otherwise provided with respect to damages liquidated in the lease
5 agreement (§ 57A-2A-504) or determined by agreement of the parties (§§ 57A-1-302
6 and 57A-2A-503~~and 57A-1-102(3)~~), if the disposition is by lease agreement
7 substantially similar to the original lease agreement and the lease agreement is made
8 in good faith and in a commercially reasonable manner, the lessor may recover from
9 the lessee as damages (a) accrued and unpaid rent as of the date of commencement
10 of the term of the new lease agreement, (b) the present value as of the date of
11 commencement of the term of the new lease agreement of the difference between the
12 total rent of the then remaining lease term of the original lease agreement and the
13 total rent for the lease term of the new lease agreement, and (c) any incidental
14 damages allowed under § 57A-2A-530, less expenses saved in consequence of the
15 lessee's default.

16 (3) If the lessor's disposition is by lease agreement that qualifies for treatment under
17 subsection (2) of this section, the lessor may elect to proceed under subsection (2) or
18 § 57A-2A-528. If the lessor's disposition is by lease agreement that for any reason
19 does not qualify for treatment under subsection (2) of this section, or is by sale or
20 otherwise, the lessor may recover from the lessee under § 57A-2A-528 as if the lessor
21 had elected not to dispose of the goods.

22 (4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for
23 value as a result of a disposition under this section takes the goods free of the original
24 lease contract and any rights of the original lessee even though the lessor fails to

1 comply with one or more of the requirements of this chapter.

2 (5) The lessor is not accountable to the lessee for any profit made on any disposition. A
3 lessee who has rightfully rejected or justifiably revoked acceptance shall account to
4 the lessor for any excess over the amount of the lessee's security interest (§ 57A-2A-
5 508(5)).

6 Section 34. That § 57A-2A-528 be amended to read as follows:

7 57A-2A-528.

8 (1) Except as otherwise provided with respect to damages liquidated in the lease
9 agreement (§ 57A-2A-504) or determined by agreement of the parties (§§ 57A-1-302
10 and 57A-2A-503 ~~and 57A-1-102(3)~~), if a lessor elects to retain the goods or a lessor
11 elects to dispose of the goods and disposition is by lease agreement, whether or not
12 the lease agreement qualifies for treatment under § 57A-2A-527(2), or is by sale or
13 otherwise, the lessor may recover from the lessee as damages for default by the lessee
14 (§ 57A-2A-523(1)) (a) accrued and unpaid rent as of the date the lessor obtained
15 possession of the goods or such earlier date as the lessee has made an effective tender
16 of possession of the goods back to the lessor, (b) the present value as of the date
17 determined under paragraph (a) of the difference between the total rent for the then
18 remaining lease term of the original lease agreement and the market rent at the time
19 determined under paragraph (a) and at the place where the goods were located on that
20 date computed for the same lease term, and (c) any incidental damages allowed under
21 § 57A-2A-530, less expenses saved in consequence of the lessee's default.

22 (2) If the measure of damages provided in subsection (1) of this section is inadequate to
23 put a lessor in as good a position as performance would have, the measure of
24 damages is the present value of the profit, including reasonable overhead, the lessor

would have made from full performance by the lessee, together with any incidental damages allowed under § 57A-2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

Section 35. That § 57A-3-103 be amended to read as follows:

57A-3-103. (a) In this chapter:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) ~~"Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.~~ (Reserved.)

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's

1 prescribed procedures and the bank's procedures do not vary unreasonably from
2 general banking usage not disapproved by this chapter or chapter 57A-4.

3 (8) "Party" means a party to an instrument.

4 (9) "Promise" means a written undertaking to pay money signed by the person
5 undertaking to pay. An acknowledgment of an obligation by the obligor is not a
6 promise unless the obligor also undertakes to pay the obligation.

7 (10) "Prove" with respect to a fact means to meet the burden of establishing the fact
8 (§ 57A-1-201(8)).

9 (11) "Remitter" means a person who purchases an instrument from its issuer if the
10 instrument is payable to an identified person other than the purchaser.

11 (b) Other definitions applying to this chapter and the sections in which they appear are:

12 "Acceptance" § 57A-3-409

13 "Accommodated party" § 57A-3-419

14 "Accommodation party" § 57A-3-419

15 "Alteration" § 57A-3-407

16 "Anomalous indorsement" § 57A-3-205

17 "Blank indorsement" § 57A-3-205

18 "Cashier's check" § 57A-3-104

19 "Certificate of deposit" § 57A-3-104

20 "Certified check" § 57A-3-409

21 "Check" § 57A-3-104

22 "Consideration" § 57A-3-303

23 "Draft" § 57A-3-104

24 "Holder in due course" § 57A-3-302

- 1 "Incomplete instrument" § 57A-3-115
- 2 "Indorsement" § 57A-3-204
- 3 "Indorser" § 57A-3-204
- 4 "Instrument" § 57A-3-104
- 5 "Issue" § 57A-3-105
- 6 "Issuer" § 57A-3-105
- 7 "Negotiable instrument" § 57A-3-104
- 8 "Negotiation" § 57A-3-201
- 9 "Note" § 57A-3-104
- 10 "Payable at a definite time" § 57A-3-108
- 11 "Payable on demand" § 57A-3-108
- 12 "Payable to bearer" § 57A-3-109
- 13 "Payable to order" § 57A-3-109
- 14 "Payment" § 57A-3-602
- 15 "Person entitled to enforce" § 57A-3-301
- 16 "Presentment" § 57A-3-501
- 17 "Reacquisition" § 57A-3-207
- 18 "Special indorsement" § 57A-3-205
- 19 "Teller's check" § 57A-3-104
- 20 "Transfer of instrument" § 57A-3-203
- 21 "Traveler's check" § 57A-3-104
- 22 "Value" § 57A-3-303
- 23 (c) The following definitions in other chapters apply to this chapter:
- 24 "Bank" § 57A-4-105

1 "Banking day" § 57A-4-104

2 "Clearing house" § 57A-4-104

3 "Collecting bank" § 57A-4-105

4 "Depository bank" § 57A-4-105

5 "Documentary draft" § 57A-4-104

6 "Intermediary bank" § 57A-4-105

7 "Item" § 57A-4-104

8 "Payor bank" § 57A-4-105

9 "Suspends payments" § 57A-4-104

10 (d) In addition, chapter 57A-1 contains general definitions and principles of construction and
11 interpretation applicable throughout this chapter.

12 Section 36. That § 57A-4-104 be amended to read as follows:

13 57A-4-104. (a) In this chapter, unless the context otherwise requires:

14 (1) "Account" means any deposit or credit account with a bank, including a demand,
15 time, savings, passbook, share draft, or like account, other than an account evidenced
16 by a certificate of deposit;

17 (2) "Afternoon" means the period of a day between noon and midnight;

18 (3) "Banking day" means the part of a day on which a bank is open to the public for
19 carrying on substantially all of its banking functions;

20 (4) "Clearing house" means an association of banks or other payors regularly clearing
21 items;

22 (5) "Customer" means a person having an account with a bank or for whom a bank has
23 agreed to collect items, including a bank that maintains an account at another bank;

24 (6) "Documentary draft" means a draft to be presented for acceptance or payment if

1 specified documents, certificated securities (§ 57A-8-102) or instructions for
2 uncertificated securities (§ 57A-8-102), or other certificates, statements, or the like
3 are to be received by the drawee or other payor before acceptance or payment of the
4 draft;

5 (7) "Draft" means a draft as defined in § 57A-3-104 or an item, other than an instrument,
6 that is an order;

7 (8) "Drawee" means a person ordered in a draft to make payment;

8 (9) "Item" means an instrument or a promise or order to pay money handled by a bank
9 for collection or payment. The term does not include a payment order governed by
10 chapter 57A-4A or a credit or debit card slip;

11 (10) "Midnight deadline" with respect to a bank is midnight on its next banking day
12 following the banking day on which it receives the relevant item or notice or from
13 which the time for taking action commences to run, whichever is later;

14 (11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or
15 by remittance, or otherwise as agreed. A settlement may be either provisional or final;

16 (12) "Suspends payments" with respect to a bank means that it has been closed by order
17 of the supervisory authorities, that a public officer has been appointed to take it over,
18 or that it ceases or refuses to make payments in the ordinary course of business.

19 (b) Other definitions applying to this chapter and the sections in which they appear are:

20 "Agreement for electronic presentment" § 57A-4-110

21 "Bank" § 57A-4-105

22 "Collecting bank" § 57A-4-105

23 "Depository bank" § 57A-4-105

24 "Intermediary bank" § 57A-4-105

1 "Payor bank" § 57A-4-105

2 "Presenting bank" § 57A-4-105

3 "Presentment notice" § 57A-4-110

4 (c) The following definitions in other chapters apply to this chapter:

5 "Acceptance" § 57A-3-409

6 "Alteration" § 57A-3-407

7 "Cashier's check" § 57A-3-104

8 "Certificate of deposit" § 57A-3-104

9 "Certified check" § 57A-3-409

10 "Check" § 57A-3-104

11 ~~—"Good faith" § 57A-3-103~~

12 "Holder in due course" § 57A-3-302

13 "Instrument" § 57A-3-104

14 "Notice of dishonor" § 57A-3-503

15 "Order" § 57A-3-103

16 "Ordinary care" § 57A-3-103

17 "Person entitled to enforce" § 57A-3-301

18 "Presentment" § 57A-3-501

19 "Promise" § 57A-3-103

20 "Prove" § 57A-3-103

21 "Teller's check" § 57A-3-104

22 "Unauthorized signature" § 57A-3-403

23 (d) In addition, chapter 57A-1 contains general definitions and principles of construction and
24 interpretation applicable throughout this chapter.

Section 37. That § 57A-4A-105 be amended to read as follows:

57A-4A-105. (a) In this chapter:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) ~~"Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.~~ (Reserved.)

1 (7) "Prove" with respect to a fact means to meet the burden of establishing the fact
2 (§ 57A-1-201(b)(8)).

3 (b) Other definitions applying to this chapter and the sections in which they appear are:

4 "Acceptance" § 57A-4A-209

5 "Beneficiary" § 57A-4A-103

6 "Beneficiary's bank" § 57A-4A-103

7 "Executed" § 57A-4A-301

8 "Execution date" § 57A-4A-301

9 "Funds transfer" § 57A-4A-104

10 "Funds-transfer system rule" § 57A-4A-501

11 "Intermediary bank" § 57A-4A-104

12 "Originator" § 57A-4A-104

13 "Originator's bank" § 57A-4A-104

14 "Payment by beneficiary's bank to beneficiary" § 57A-4A-405

15 "Payment by originator to beneficiary" § 57A-4A-406

16 "Payment by sender to receiving bank" § 57A-4A-403

17 "Payment date" § 57A-4A-401

18 "Payment order" § 57A-4A-103

19 "Receiving bank" § 57A-4A-103

20 "Security procedure" § 57A-4A-201

21 "Sender" § 57A-4A-103

22 (c) The following definitions in chapter 57A-4 apply to this chapter:

23 "Clearing house" § 57A-4-104

24 "Item" § 57A-4-104

1 "Suspends payments" § 57A-4-104

2 (d) In addition chapter 57A-1 contains general definitions and principles of construction
3 and interpretation applicable throughout this chapter.

4 Section 38. That § 57A-4A-106 be amended to read as follows:

5 57A-4A-106. (a) The time of receipt of a payment order or communication cancelling or
6 amending a payment order is determined by the rules applicable to receipt of a notice stated in
7 ~~§ 57A-1-201(27)~~ § 57A-1-202. A receiving bank may fix a cut-off time or times on a
8 funds-transfer business day for the receipt and processing of payment orders and
9 communications cancelling or amending payment orders. Different cut-off times may apply to
10 payment orders, cancellations or amendments, or to different categories of payment orders,
11 cancellations or amendments. A cut-off time may apply to senders generally or different cut-off
12 times may apply to different senders or categories of payment orders. If a payment order or
13 communication cancelling or amending a payment order is received after the close of a
14 funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day,
15 the receiving bank may treat the payment order or communication as received at the opening of
16 the next funds-transfer business day.

17 (b) If this article refers to an execution date or payment date or states a day on which a
18 receiving bank is required to take action, and the date or day does not fall on a funds-transfer
19 business day, the next day that is a funds-transfer business day is treated as the date or day
20 stated, unless the contrary is stated in this chapter.

21 Section 39. That § 57A-4A-204 be amended to read as follows:

22 57A-4A-204. (a) If a receiving bank accepts a payment order issued in the name of its
23 customer as sender which is (i) not authorized and not effective as the order of the customer
24 under § 57A-4A-202, or (ii) not enforceable, in whole or in part, against the customer under

1 § 57A-4A-203, the bank shall refund any payment of the payment order received from the
2 customer to the extent the bank is not entitled to enforce payment and shall pay interest on the
3 refundable amount calculated from the date the bank received payment to the date of the refund.
4 However, the customer is not entitled to interest from the bank on the amount to be refunded
5 if the customer fails to exercise ordinary care to determine that the order was not authorized by
6 the customer and to notify the bank of the relevant facts within a reasonable time not exceeding
7 ninety days after the date the customer received notification from the bank that the order was
8 accepted or that the customer's account was debited with respect to the order. The bank is not
9 entitled to any recovery from the customer on account of a failure by the customer to give
10 notification as stated in this section.

11 (b) Reasonable time under subsection (a) may be fixed by agreement as stated in ~~§ 57A-1-~~
12 ~~204(1)~~ § 57A-1-302(b), but the obligation of a receiving bank to refund payment as stated in
13 subsection (a) may not otherwise be varied by agreement.

14 Section 40. That § 57A-5-103 be amended to read as follows:

15 57A-5-103. (a) This chapter applies to letters of credit and to certain rights and obligations
16 arising out of transactions involving letters of credit.

17 (b) The statement of a rule in this chapter does not by itself require, imply, or negate
18 application of the same or a different rule to a situation not provided for, or to a person not
19 specified, in this chapter.

20 (c) With the exception of this subsection, subsections (a) and (d), §§ 57A-5-102(a)(9) and
21 (10), 57A-5-106(d), and 57A-5-114(d), and except to the extent prohibited in ~~§§ 57A-1-102(3)~~
22 §§ 57A-1-302 and 57A-5-117(d), the effect of this chapter may be varied by agreement or by
23 a provision stated or incorporated by reference in an undertaking. A term in an agreement or
24 undertaking generally excusing liability or generally limiting remedies for failure to perform

obligations is not sufficient to vary obligations prescribed by this chapter.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

Section 41. That § 57A-8-102 be amended to read as follows:

57A-8-102. (a) In this chapter:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the

1 registration requirement, if its activities as a clearing corporation, including
2 promulgation of rules, are subject to regulation by a federal or state
3 governmental authority.

4 (6) "Communicate" means to:

5 (i) Send a signed writing; or

6 (ii) Transmit information by any mechanism agreed upon by the persons
7 transmitting and receiving the information.

8 (7) "Entitlement holder" means a person identified in the records of a securities
9 intermediary as the person having a security entitlement against the securities
10 intermediary. If a person acquires a security entitlement by virtue of § 57A-8-
11 501(b)(2) or (3), that person is the entitlement holder.

12 (8) "Entitlement order" means a notification communicated to a securities intermediary
13 directing transfer or redemption of a financial asset to which the entitlement holder
14 has a security entitlement.

15 (9) "Financial asset," except as otherwise provided in § 57A-8-103, means:

16 (i) A security;

17 (ii) An obligation of a person or a share, participation, or other interest in a person
18 or in property or an enterprise of a person, which is, or is of a type, dealt in or
19 traded on financial markets, or which is recognized in any area in which it is
20 issued or dealt in as a medium for investment; or

21 (iii) Any property that is held by a securities intermediary for another person in a
22 securities account if the securities intermediary has expressly agreed with the
23 other person that the property is to be treated as a financial asset under this
24 chapter.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

~~(10) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing. (Reserved.)~~

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in § 57A-8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

1 (i) Which is represented by a security certificate in bearer or registered form, or
2 the transfer of which may be registered upon books maintained for that
3 purpose by or on behalf of the issuer;

4 (ii) Which is one of a class or series or by its terms is divisible into a class or
5 series of shares, participations, interests, or obligations; and

6 (iii) Which:

7 (A) Is, or is of a type, dealt in or traded on securities exchanges or securities
8 markets; or

9 (B) Is a medium for investment and by its terms expressly provides that it
10 is a security governed by this chapter.

11 (16) "Security certificate" means a certificate representing a security.

12 (17) "Security entitlement" means the rights and property interest of an entitlement holder
13 with respect to a financial asset specified in Part 5.

14 (18) "Uncertificated security" means a security that is not represented by a certificate.

15 (b) Other definitions applying to this chapter and the sections in which they appear are:

16 Appropriate person § 57A-8-107

17 Control § 57A-8-106

18 Delivery § 57A-8-301

19 Investment company security § 57A-8-103

20 Issuer § 57A-8-201

21 Overissue § 57A-8-210

22 Protected purchaser § 57A-8-303

23 Securities account § 57A-8-501

24 (c) In addition, chapter 57A-1 contains general definitions and principles of construction and

1 interpretation applicable throughout this chapter.

2 (d) The characterization of a person, business, or transaction for purposes of this chapter
3 does not determine the characterization of the person, business, or transaction for purposes of
4 any other law, regulation, or rule.

5 Section 42. That § 57A-9-102 be amended to read as follows:

6 57A-9-102. (a) In this chapter:

7 (1) "Accession" means goods that are physically united with other goods in such a
8 manner that the identity of the original goods is not lost.

9 (2) "Account," except as used in "account for," means a right to payment of a monetary
10 obligation, whether or not earned by performance, (i) for property that has been or
11 is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services
12 rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv)
13 for a secondary obligation incurred or to be incurred, (v) for energy provided or to be
14 provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii)
15 arising out of the use of a credit or charge card or information contained on or for use
16 with the card, or (viii) as winnings in a lottery or other game of chance operated or
17 sponsored by a state, governmental unit of a state, or person licensed or authorized
18 to operate the game by a state or governmental unit of a state. The term includes
19 health-care-insurance receivables. The term does not include (i) rights to payment
20 evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit
21 accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or
22 (vi) rights to payment for money or funds advanced or sold, other than rights arising
23 out of the use of a credit or charge card or information contained on or for use with
24 the card.

1 (3) "Account debtor" means a person obligated on an account, chattel paper, or general
2 intangible. The term does not include persons obligated to pay a negotiable
3 instrument, even if the instrument constitutes part of chattel paper.

4 (4) "Accounting," except as used in "accounting for," means a record:

5 (A) Authenticated by a secured party;

6 (B) Indicating the aggregate unpaid secured obligations as of a date not more than
7 35 days earlier or 35 days later than the date of the record; and

8 (C) Identifying the components of the obligations in reasonable detail.

9 (5) "Agricultural lien" means an interest, other than a security interest, in farm products:

10 (A) Which secures payment or performance of an obligation for:

11 (i) Goods or services furnished in connection with a debtor's farming
12 operation; or

13 (ii) Rent on real property leased by a debtor in connection with its farming
14 operation;

15 (B) Which is created by statute in favor of a person that:

16 (i) In the ordinary course of its business furnished goods or services to a
17 debtor in connection with a debtor's farming operation; or

18 (ii) Leased real property to a debtor in connection with the debtor's farming
19 operation; and

20 (C) Whose effectiveness does not depend on the person's possession of the
21 personal property.

22 (6) "As-extracted collateral" means:

23 (A) Oil, gas, or other minerals that are subject to a security interest that:

24 (i) Is created by a debtor having an interest in the minerals before

1 extraction; and

2 (ii) Attaches to the minerals as extracted; or

3 (B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or
4 other minerals in which the debtor had an interest before extraction.

5 (7) "Authenticate" means:

6 (A) To sign; or

7 (B) To execute or otherwise adopt a symbol, or encrypt or similarly process a
8 record in whole or in part, with the present intent of the authenticating person
9 to identify the person and adopt or accept a record.

10 (8) "Bank" means an organization that is engaged in the business of banking. The term
11 includes savings banks, savings and loan associations, credit unions, and trust
12 companies.

13 (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the
14 like.

15 (10) "Certificate of title" means a certificate of title with respect to which a statute
16 provides for the security interest in question to be indicated on the certificate as a
17 condition or result of the security interest's obtaining priority over the rights of a lien
18 creditor with respect to the collateral.

19 (11) "Chattel paper" means a record or records that evidence both a monetary obligation
20 and a security interest in specific goods, a security interest in specific goods and
21 software used in the goods, a security interest in specific goods and license of
22 software used in the goods, a lease of specific goods, or a lease of specific goods and
23 license of software used in the goods. In this paragraph, "monetary obligation" means
24 a monetary obligation secured by the goods or owed under a lease of the goods and

1 includes a monetary obligation with respect to software used in the goods. The term
2 does not include (i) charters or other contracts involving the use or hire of a vessel
3 or (ii) records that evidence a right to payment arising out of the use of a credit or
4 charge card or information contained on or for use with the card. If a transaction is
5 evidenced by records that include an instrument or series of instruments, the group
6 of records taken together constitutes chattel paper.

7 (12) "Collateral" means the property subject to a security interest or agricultural lien. The
8 term includes:

9 (A) Proceeds to which a security interest attaches;

10 (B) Accounts, chattel paper, payment intangibles, and promissory notes that have
11 been sold; and

12 (C) Goods that are the subject of a consignment.

13 (13) "Commercial tort claim" means a claim arising in tort with respect to which:

14 (A) The claimant is an organization; or

15 (B) The claimant is an individual and the claim:

16 (i) Arose in the course of the claimant's business or profession; and

17 (ii) Does not include damages arising out of personal injury to or the death
18 of an individual.

19 (14) "Commodity account" means an account maintained by a commodity intermediary
20 in which a commodity contract is carried for a commodity customer.

21 (15) "Commodity contract" means a commodity futures contract, an option on a
22 commodity futures contract, a commodity option, or another contract if the contract
23 or option is:

24 (A) Traded on or subject to the rules of a board of trade that has been designated

1 as a contract market for such a contract pursuant to federal commodities laws;
2 or

3 (B) Traded on a foreign commodity board of trade, exchange, or market, and is
4 carried on the books of a commodity intermediary for a commodity customer.

5 (16) "Commodity customer" means a person for which a commodity intermediary carries
6 a commodity contract on its books.

7 (17) "Commodity intermediary" means a person that:

8 (A) Is registered as a futures commission merchant under federal commodities
9 law; or

10 (B) In the ordinary course of its business provides clearance or settlement services
11 for a board of trade that has been designated as a contract market pursuant to
12 federal commodities law.

13 (18) "Communicate" means:

14 (A) To send a written or other tangible record;

15 (B) To transmit a record by any means agreed upon by the persons sending and
16 receiving the record; or

17 (C) In the case of transmission of a record to or by a filing office, to transmit a
18 record by any means prescribed by filing-office rule.

19 (19) "Consignee" means a merchant to which goods are delivered in a consignment.

20 (20) "Consignment" means a transaction, regardless of its form, in which a person delivers
21 goods to a merchant for the purpose of sale and:

22 (A) The merchant:

23 (i) Deals in goods of that kind under a name other than the name of the
24 person making delivery;

- 1 (ii) Is not an auctioneer; and
- 2 (iii) Is not generally known by its creditors to be substantially engaged in
- 3 selling the goods of others;
- 4 (B) With respect to each delivery, the aggregate value of the goods is \$1,000 or
- 5 more at the time of delivery;
- 6 (C) The goods are not consumer goods immediately before delivery; and
- 7 (D) The transaction does not create a security interest that secures an obligation.
- 8 (21) "Consignor" means a person that delivers goods to a consignee in a consignment.
- 9 (22) "Consumer debtor" means a debtor in a consumer transaction.
- 10 (23) "Consumer goods" means goods that are used or bought for use primarily for
- 11 personal, family, or household purposes.
- 12 (24) "Consumer-goods transaction" means a consumer transaction in which:
- 13 (A) An individual incurs an obligation primarily for personal, family, or household
- 14 purposes; and
- 15 (B) A security interest in consumer goods secures the obligation.
- 16 (25) "Consumer obligor" means an obligor who is an individual and who incurred the
- 17 obligation as part of a transaction entered into primarily for personal, family, or
- 18 household purposes.
- 19 (26) "Consumer transaction" means a transaction in which (i) an individual incurs an
- 20 obligation primarily for personal, family, or household purposes, (ii) a security
- 21 interest secures the obligation, and (iii) the collateral is held or acquired primarily for
- 22 personal, family, or household purposes. The term includes consumer-goods
- 23 transactions.
- 24 (27) "Continuation statement" means an amendment of a financing statement which:

1 (A) Identifies, by its file number, the initial financing statement to which it relates;
2 and

3 (B) Indicates that it is a continuation statement for, or that it is filed to continue
4 the effectiveness of, the identified financing statement.

5 (28) "Debtor" means:

6 (A) A person having an interest, other than a security interest or other lien, in the
7 collateral, whether or not the person is an obligor;

8 (B) A seller of accounts, chattel paper, payment intangibles, or promissory notes;
9 or

10 (C) A consignee.

11 (29) "Deposit account" means a demand, time, savings, passbook, or similar account
12 maintained with a bank. The term does not include investment property or accounts
13 evidenced by an instrument.

14 (30) "Document" means a document of title or a receipt of the type described in § 57A-7-
15 201(2).

16 (31) "Electronic chattel paper" means chattel paper evidenced by a record or records
17 consisting of information stored in an electronic medium.

18 (32) "Encumbrance" means a right, other than an ownership interest, in real property. The
19 term includes mortgages and other liens on real property.

20 (33) "Equipment" means goods other than inventory, farm products, or consumer goods.

21 (34) "Farm products" means goods, other than standing timber, with respect to which the
22 debtor is engaged in a farming operation and which are:

23 (A) Crops grown, growing, or to be grown, including:

24 (i) Crops produced on trees, vines, and bushes; and

- 1 (ii) Aquatic goods produced in aquacultural operations;
- 2 (B) Livestock, born or unborn, including aquatic goods produced in aquacultural
- 3 operations;
- 4 (C) Supplies used or produced in a farming operation; or
- 5 (D) Products of crops or livestock in their unmanufactured states.
- 6 (35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or
- 7 any other farming, livestock, or aquacultural operation.
- 8 (36) "File number" means the number assigned to an initial financing statement pursuant
- 9 to § 57A-9-519(a).
- 10 (37) "Filing office" means an office designated in § 57A-9-501 as the place to file a
- 11 financing statement.
- 12 (38) "Filing-office rule" means a rule adopted pursuant to § 57A-9-526.
- 13 (39) "Financing statement" means a record or records composed of an initial financing
- 14 statement and any filed record relating to the initial financing statement.
- 15 (40) "Fixture filing" means the filing of a financing statement covering goods that are or
- 16 are to become fixtures and satisfying § 57A-9-502(a) and (b). The term includes the
- 17 filing of a financing statement covering goods of a transmitting utility which are or
- 18 are to become fixtures.
- 19 (41) "Fixtures" means goods that have become so related to particular real property that
- 20 an interest in them arises under real property law.
- 21 (42) "General intangible" means any personal property, including things in action, other
- 22 than accounts, chattel paper, commercial tort claims, deposit accounts, documents,
- 23 goods, instruments, investment property, letter-of-credit rights, letters of credit,
- 24 money, and oil, gas, or other minerals before extraction. The term includes payment

1 intangibles and software.

2 (43) ~~"Good faith" means honesty in fact and the observance of reasonable commercial~~
3 ~~standards of fair dealing.~~ (Reserved.)

4 (44) "Goods" means all things that are movable when a security interest attaches. The
5 term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a
6 conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown,
7 growing, or to be grown, even if the crops are produced on trees, vines, or bushes,
8 and (v) manufactured homes. The term also includes a computer program embedded
9 in goods and any supporting information provided in connection with a transaction
10 relating to the program if (i) the program is associated with the goods in such a
11 manner that it customarily is considered part of the goods, or (ii) by becoming the
12 owner of the goods, a person acquires a right to use the program in connection with
13 the goods. The term does not include a computer program embedded in goods that
14 consist solely of the medium in which the program is embedded. The term also does
15 not include accounts, chattel paper, commercial tort claims, deposit accounts,
16 documents, general intangibles, instruments, investment property, letter-of-credit
17 rights, letters of credit, money, or oil, gas, or other minerals before extraction.

18 (45) "Governmental unit" means a subdivision, agency, department, county, parish,
19 municipality, or other unit of the government of the United States, a state, or a
20 foreign country. The term includes an organization having a separate corporate
21 existence if the organization is eligible to issue debt on which interest is exempt from
22 income taxation under the laws of the United States.

23 (46) "Health-care-insurance receivable" means an interest in or claim under a policy of
24 insurance which is a right to payment of a monetary obligation for health-care goods

1 or services provided.

2 (47) "Instrument" means a negotiable instrument or any other writing that evidences a
3 right to the payment of a monetary obligation, is not itself a security agreement or
4 lease, and is of a type that in ordinary course of business is transferred by delivery
5 with any necessary indorsement or assignment. The term does not include (i)
6 investment property, (ii) letters of credit, or (iii) writings that evidence a right to
7 payment arising out of the use of a credit or charge card or information contained on
8 or for use with the card.

9 (48) "Inventory" means goods, other than farm products, which:

10 (A) Are leased by a person as lessor;

11 (B) Are held by a person for sale or lease or to be furnished under a contract of
12 service;

13 (C) Are furnished by a person under a contract of service; or

14 (D) Consist of raw materials, work in process, or materials used or consumed in
15 a business.

16 (49) "Investment property" means a security, whether certificated or uncertificated,
17 security entitlement, securities account, commodity contract, or commodity account.

18 (50) "Jurisdiction of organization" with respect to a registered organization, means the
19 jurisdiction under whose law the organization is organized.

20 (51) "Letter-of-credit right" means a right to payment or performance under a letter of
21 credit, whether or not the beneficiary has demanded or is at the time entitled to
22 demand payment or performance. The term does not include the right of a beneficiary
23 to demand payment or performance under a letter of credit.

24 (52) "Lien creditor" means:

- 1 (A) A creditor that has acquired a lien on the property involved by attachment,
2 levy, or the like;
- 3 (B) An assignee for benefit of creditors from the time of assignment;
- 4 (C) A trustee in bankruptcy from the date of the filing of the petition; or
- 5 (D) A receiver in equity from the time of appointment.
- 6 (53) "Manufactured home" means a structure, transportable in one or more sections,
7 which, in the traveling mode, is eight body feet or more in width or 40 body feet or
8 more in length, or, when erected on site, is 320 or more square feet, and which is
9 built on a permanent chassis and designed to be used as a dwelling with or without
10 a permanent foundation when connected to the required utilities, and includes the
11 plumbing, heating, air-conditioning, and electrical systems contained therein. The
12 term includes any structure that meets all of the requirements of this paragraph except
13 the size requirements and with respect to which the manufacturer voluntarily files a
14 certification required by the United States Secretary of Housing and Urban
15 Development and complies with the standards established under Title 42 of the
16 United States Code.
- 17 (54) "Manufactured-home transaction" means a secured transaction:
- 18 (A) That creates a purchase-money security interest in a manufactured home, other
19 than a manufactured home held as inventory; or
- 20 (B) In which a manufactured home, other than a manufactured home held as
21 inventory, is the primary collateral.
- 22 (55) "Mortgage" means a consensual interest in real property, including fixtures, which
23 secures payment or performance of an obligation.
- 24 (56) "New debtor" means a person that becomes bound as debtor under § 57A-9-203(d)

1 by a security agreement previously entered into by another person.

2 (57) "New value" means (i) money, (ii) money's worth in property, services, or new credit,
3 or (iii) release by a transferee of an interest in property previously transferred to the
4 transferee. The term does not include an obligation substituted for another obligation.

5 (58) "Noncash proceeds" means proceeds other than cash proceeds.

6 (59) "Obligor" means a person that, with respect to an obligation secured by a security
7 interest in or an agricultural lien on the collateral, (i) owes payment or other
8 performance of the obligation, (ii) has provided property other than the collateral to
9 secure payment or other performance of the obligation, or (iii) is otherwise
10 accountable in whole or in part for payment or other performance of the obligation.
11 The term does not include issuers or nominated persons under a letter of credit.

12 (60) "Original debtor," except as used in § 57A-9-310(c), means a person that, as debtor,
13 entered into a security agreement to which a new debtor has become bound under
14 § 57A-9-203(d).

15 (61) "Payment intangible" means a general intangible under which the account debtor's
16 principal obligation is a monetary obligation.

17 (62) "Person related to," with respect to an individual, means:

18 (A) The spouse of the individual;

19 (B) A brother, brother-in-law, sister, or sister-in-law of the individual;

20 (C) An ancestor or lineal descendant of the individual or the individual's spouse;

21 or

22 (D) Any other relative, by blood or marriage, of the individual or the individual's
23 spouse who shares the same home with the individual.

24 (63) "Person related to," with respect to an organization, means:

- 1 (A) A person directly or indirectly controlling, controlled by, or under common
- 2 control with the organization;
- 3 (B) An officer or director of, or a person performing similar functions with respect
- 4 to, the organization;
- 5 (C) An officer or director of, or a person performing similar functions with respect
- 6 to, a person described in subparagraph (A);
- 7 (D) The spouse of an individual described in subparagraph (A), (B), or (C); or
- 8 (E) An individual who is related by blood or marriage to an individual described
- 9 in subparagraph (A), (B), (C), or (D) and shares the same home with the
- 10 individual.

11 (64) "Proceeds," except as used in § 57A-9-609(b), means the following property:

- 12 (A) Whatever is acquired upon the sale, lease, license, exchange, or other
- 13 disposition of collateral;
- 14 (B) Whatever is collected on, or distributed on account of, collateral;
- 15 (C) Rights arising out of collateral;
- 16 (D) To the extent of the value of collateral, claims arising out of the loss,
- 17 nonconformity, or interference with the use of, defects or infringement of
- 18 rights in, or damage to, the collateral; or
- 19 (E) To the extent of the value of collateral and to the extent payable to the debtor
- 20 or the secured party, insurance payable by reason of the loss or nonconformity
- 21 of, defects or infringement of rights in, or damage to, the collateral.

22 (65) "Promissory note" means an instrument that evidences a promise to pay a monetary

23 obligation, does not evidence an order to pay, and does not contain an

24 acknowledgment by a bank that the bank has received for deposit a sum of money or

1 funds.

2 (66) "Proposal" means a record authenticated by a secured party which includes the terms
3 on which the secured party is willing to accept collateral in full or partial satisfaction
4 of the obligation it secures pursuant to §§ 57A-9-620, 57A-9-621, and 57A-9-622.

5 (67) "Public-finance transaction" means a secured transaction in connection with which:

6 (A) Debt or other securities are issued; and

7 (B) The debtor, obligor, secured party, account debtor or other person obligated
8 on collateral, assignor or assignee of a secured obligation, or assignor or
9 assignee of a security interest is a state or a governmental unit of a state.

10 (68) "Pursuant to commitment," with respect to an advance made or other value given by
11 a secured party, means pursuant to the secured party's obligation, whether or not a
12 subsequent event of default or other event not within the secured party's control has
13 relieved or may relieve the secured party from its obligation.

14 (69) "Record," except as used in "for record," "of record," "record or legal title," and
15 "record owner," means information that is inscribed on a tangible medium or which
16 is stored in an electronic or other medium and is retrievable in perceivable form.

17 (70) "Registered organization" means an organization organized solely under the law of
18 a single state or the United States and as to which the state or the United States must
19 maintain a public record showing the organization to have been organized.

20 (71) "Secondary obligor" means an obligor to the extent that:

21 (A) The obligor's obligation is secondary; or

22 (B) The obligor has a right of recourse with respect to an obligation secured by
23 collateral against the debtor, another obligor, or property of either.

24 (72) "Secured party" means:

- 1 (A) A person in whose favor a security interest is created or provided for under a
2 security agreement, whether or not any obligation to be secured is outstanding;
- 3 (B) A person that holds an agricultural lien;
- 4 (C) A consignor;
- 5 (D) A person to which accounts, chattel paper, payment intangibles, or promissory
6 notes have been sold;
- 7 (E) A trustee, indenture trustee, agent, collateral agent, or other representative in
8 whose favor a security interest or agricultural lien is created or provided for;
9 or
- 10 (F) A person that holds a security interest arising under § 57A-2-401, 57A-2-505,
11 57A-2-711(3), 57A-2A-508(5), 57A-4-210, or 57A-5-118.
- 12 (73) "Security agreement" means an agreement that creates or provides for a security
13 interest.
- 14 (74) "Send," in connection with a record or notification, means:
- 15 (A) To deposit in the mail, deliver for transmission, or transmit by any other usual
16 means of communication, with postage or cost of transmission provided for,
17 addressed to any address reasonable under the circumstances; or
- 18 (B) To cause the record or notification to be received within the time that it would
19 have been received if properly sent under subparagraph (A).
- 20 (75) "Software" means a computer program and any supporting information provided in
21 connection with a transaction relating to the program. The term does not include a
22 computer program that is included in the definition of goods.
- 23 (76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
24 United States Virgin Islands, or any territory or insular possession subject to the

1 jurisdiction of the United States.

2 (77) "Supporting obligation" means a letter-of-credit right or secondary obligation that
3 supports the payment or performance of an account, chattel paper, a document, a
4 general intangible, an instrument, or investment property.

5 (78) "Tangible chattel paper" means chattel paper evidenced by a record or records
6 consisting of information that is inscribed on a tangible medium.

7 (79) "Termination statement" means an amendment of a financing statement which:

8 (A) Identifies, by its file number, the initial financing statement to which it relates;
9 and

10 (B) Indicates either that it is a termination statement or that the identified
11 financing statement is no longer effective.

12 (80) "Transmitting utility" means a person primarily engaged in the business of:

13 (A) Operating a railroad, subway, street railway, or trolley bus;

14 (B) Transmitting communications electrically, electromagnetically, or by light;

15 (C) Transmitting goods by pipeline or sewer; or

16 (D) Transmitting or producing and transmitting electricity, steam, gas, or water.

17 (b) The following definitions in other sections apply to this chapter:

18 "Applicant," § 57A-5-102.

19 "Broker." § 57A-8-102.

20 "Certificated security." § 57A-8-102.

21 "Check." § 57A-3-104.

22 "Clearing corporation." § 57A-8-102.

23 "Contract for sale." § 57A-2-106.

24 "Customer." § 57A-4-104.

- 1 "Entitlement holder." § 57A-8-102.
- 2 "Financial asset." § 57A-8-102.
- 3 "Holder in due course." § 57A-3-302.
- 4 "Issuer" (with respect to a letter of credit or letter-of-credit right). § 57A-5-102.
- 5 "Issuer" (with respect to a security). § 57A-8-201.
- 6 "Lease." § 57A-2A-103.
- 7 "Lease agreement." § 57A-2A-103.
- 8 "Lease contract." § 57A-2A-103.
- 9 "Leasehold interest." § 57A-2A-103.
- 10 "Lessee." § 57A-2A-103.
- 11 "Lessee in ordinary course of business." § 57A-2A-103.
- 12 "Lessor." § 57A-2A-103.
- 13 "Lessor's residual interest." § 57A-2A-103.
- 14 "Letter of credit." § 57A-5-102.
- 15 "Merchant." § 57A-2-104.
- 16 "Negotiable instrument." § 57A-3-104.
- 17 "Nominated person." § 57A-5-102.
- 18 "Note." § 57A-3-104.
- 19 "Proceeds of a letter of credit." § 57A-5-114.
- 20 "Prove." § 57A-3-103.
- 21 "Sale." § 57A-2-106.
- 22 "Securities account." § 57A-8-501.
- 23 "Securities intermediary." § 57A-8-102.
- 24 "Security." § 57A-8-102.

1 "Security certificate." § 57A-8-102.

2 "Security entitlement." § 57A-8-102.

3 "Uncertificated security." § 57A-8-102.

4 (c) SDCL chapter 57A-1 contains general definitions and principles of construction and
5 interpretation applicable throughout this chapter.

6 Section 43. That §§ 57A-1-101 to 57A-1-208, inclusive, be repealed.